

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

MICHAEL KUTZBACK, Individually on behalf
of himself and others similarly situated,

Plaintiff,

v.

Case No. 2:13-cv-02767

LMS INTELLIBOUND, LLC, a Foreign Limited
Liability Company and CAPSTONE LOGISTICS,
LLC, a Domestic Limited Liability Company,

Defendants.

DEFENDANT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Capstone Logistics, LLC, by and through counsel, hereby moves the Court to dismiss the Complaint of Plaintiff Michael Kutzback for failure to state a claim upon which relief can be granted.

Defendant LMS Intellibound, LLC filed a Motion to Dismiss on November 1, 2013. (*See* Dkt. No. 15.) At that time, Plaintiff had not served Defendant Capstone with a Summons and Complaint. Plaintiff subsequently served Defendant Capstone on November 6, 2013. (Dkt. No. 18.) Defendant Capstone therefore now submits its Motion to Dismiss, which includes the same arguments and authorities set forth in Defendant LMS Intellibound's Motion to Dismiss. Defendant Capstone respectfully requests that the Court dismiss Plaintiff's Complaint in its entirety.

Respectfully submitted, this 27th day of November, 2013.

By: /s/ Craig A. Cowart
Craig A. Cowart (BPR No. 017316)
1715 Aaron Brenner Dr., Suite 312
Memphis, TN 38120
(901) 526-0431 (telephone)
(901) 526-8183 (facsimile)
ccowart@laborlawyers.com

Matthew R. Simpson (Georgia Bar No. 540260)
Admitted Pro Hac Vice
1075 Peachtree Street NE, Suite 3500
Atlanta, Georgia 30309
(404) 231-1400 (Telephone)
(404) 240-4249 (Facsimile)
msimpson@laborlawyers.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2013, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which a sent copy of the same to all counsel of record.

/s/Craig A. Cowart
Craig A. Cowart